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IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

GERALD E. PICKERING, *et al.*,
Cross-Petitioners,

v.

UNISYS CORPORATION,
Cross-Respondent.

On Cross-Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Where a welfare benefit plan governed by the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq.*, provides in a summary plan description that participants are eligible for benefits under the plan for life and also expressly reserves the employer's right to terminate, amend or modify the plan:

1. May a court reject the alternative interpretations of the summary plan description advanced by the participants based on findings of fact, entered following a full trial, that the court of appeals concluded were not clearly erroneous?

2. May a court conclude that the summary plan description is unambiguous as a matter of law?

3. May a court conclude that the participants' understanding that they were entitled to vested benefits is unreasonable as a matter of law and that the participants therefore have no estoppel claim under the federal common law of ERISA?

RULE 29.1 STATEMENT

Unisys Corporation has no parent. Its subsidiaries, other than wholly-owned subsidiaries, are Nihon Unisys Ltd. and Oki Unisys Kaisha, Ltd.

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RESPONDENT'S BRIEF IN OPPOSITION

Unisys Corporation ("Unisys") respectfully requests that the Court deny the Conditional Cross-Petition for a Writ of Certiorari submitted by Gerald E. Pickering, *et al.* ("the Sperry regular retirees" or "the retirees").

STATEMENT OF THE CASE

Unisys incorporates by reference the Statement of the Case set forth in its petition docketed at No. 95-376.

REASONS FOR DENYING THE CROSS-PETITION

I. The District Court's Holding That The Sperry Regular Retirees Were Not Entitled To Vested Medical Benefits Under The Terms Of The Applicable Plans Was Based On Findings Of Fact Entered Following A Full Trial And Correctly Sustained By The Court Of Appeals.

The district court held, based on comprehensive findings of fact entered after a bench trial, that the Sperry regular retirees "have not satisfied their burden of proving that their benefits had vested." App. 80a. In response, the Sperry regular retirees argue in their cross-petition that the district court "applied an incorrect legal standard to the evidence" (Cross-Pet. 18), and that the court "gave controlling effect to Unisys' evidence of purely subjective intentions on the part of few executives, which were never disclosed to the Retirees." Cross-Pet. 18.

Neither assertion provides any basis for review of the result reached by the courts below on the Sperry regular retirees' plan-based claims. The retirees have failed to identify any disagreement among the circuits regarding the appropriate legal standard to apply to the evidence, and they are simply wrong in their description of the district court's analysis and of the evidence presented by Unisys.

In contrast to the breach of fiduciary duty claims that are the subject of Unisys' petition — which were reinstated by the district court after it reconsidered its earlier order entering summary judgment in favor of Unisys on those claims and which therefore have yet to be tried — the Sperry regular retirees' claim for vested medical benefits under the terms of the applicable plans was tried on the merits.[1] In rejecting that

1. For that reason, the retirees' argument that the Court should grant their cross-petition if it grants Unisys' petition so that the case can be "reviewed in its full context" (Cross-Pet. 13) is unpersuasive. The district court's decision rejecting the plan-based claims of the retirees was fact-intensive, involving the interpretation of the summary plan descriptions and a careful weighing of all of the evidence submitted by the parties in support of their differing interpretations. By contrast, the questions presented in

claim, the district court considered the testimony of some 88 witnesses and more than 700 exhibits, including summary plan descriptions distributed to plan participants in which the company had reserved the right to modify or terminate its medical benefit plans at "any time" or for "any reason." App. 37a, 42a-65a. The district court found nothing ambiguous in the company's practice of using the term "lifetime" in a summary plan description to describe the time period during which a plan participant would be eligible for benefits, while expressly reserving in the same document its right to amend or terminate the plan under which those benefits were provided. App. 71a-74a. Nonetheless, the district court also reviewed the extensive extrinsic evidence presented by the parties at trial to determine whether there was a factual basis for the alternative interpretations of the summary plan descriptions advanced by the Sperry regular retirees: (1) that the reservation of rights clause applied only to the benefits of active employees; and (2) that the company's use of the term "lifetime" in the summary plan descriptions was intended to affect its right to terminate the plans, and thereby to limit the applicability of the reservation of rights clause. App. 74a-80a.

The district court rejected both of these interpretations of the summary plan descriptions. App. 75a-76a. The district court did not, however, give "controlling effect" to the "purely subjective intentions on the part of few executives." Cross-Pet. 18. To the contrary, the district court relied primarily on *objective* facts that were never disputed by the Sperry regular retirees. These undisputed facts were set forth in detail in the decision of the district court. App. 60a-65a, 75a-77a. They were also summarized in the decision of the court of appeals:

> Although the retirees argued that when the company used the term "lifetime," its true intent was to vest benefits, the district court found that the use of the word "lifetime" did not manifest an intent on the part of the

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Unisys' petition are fundamental issues of statutory construction, the importance of which this Court previously recognized when it granted certiorari in the case of *Varity Corp. v. Howe*, 115 S. Ct. 1792 (1995) (No. 94-1471; argued November 1, 1995).

> plan sponsor to create "vested" benefits, because the evidence did not support this argument. The district court concluded that because the company had used the word "vested" in its medical plan for its top level Sperry executives, but not in the rank and file plans, the company must have intended *not* to vest the rank and file benefits. Rather, as the language in the executive plan revealed, when the company wanted to create vested benefits, it knew how to do so.
>
> The district court also found that the retirees' assertion that the reservation of rights, which did not facially distinguish between actives and retirees, applied only to actives was not supported by a preponderance of the evidence . . . [which included] the fact that not a single document corroborated the testimony that an active/retiree distinction was in force; the distinction was not incorporated into the reservation of rights or summary plan descriptions or reduced to writing as an official policy. The district court found significant the facts that the alleged policy of restricting the [reservation of rights clauses] to active employees had never been formally discussed by the Board of Directors, and that a Board resolution did not exist confirming the creation of this policy. We agree with the district court that all of these factors militate against the idea that Unisys intended to restrict the application of the [reservation of rights clauses] to active employees.

App. 149a-150a (emphasis in original; footnotes and citations omitted).

There is simply no basis, therefore, for the Sperry regular retirees' assertion that the district court applied an "incorrect legal standard" by giving "controlling effect" to the "purely subjective intentions" of Unisys' executives. Cross-Pet. 18. This argument is nothing more than a backhanded attempt to attack the district court's findings of fact, findings that the court of appeals concluded were "firmly support[ed]" by the record and therefore not clearly erroneous. App. 151a. This

Court has consistently refused to grant certiorari to review decisions that turn upon an analysis of a court's factual findings, or upon the construction of contracts or written instruments. The Court "does not grant a certiorari to review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227 (1925). This is particularly true when a lower court's findings of fact have been affirmed by a court of appeals. Under those circumstances, the Court has held that "[a] court of law, such as this Court is, rather than a court for correction of errors in factfinding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional show of error." *Goodman v. Lukens Steel Co.*, 482 U.S. 656, 665 (1987) (*quoting Graver Mfg. Co. v. Linde Co.*, 336 U.S. 271, 275 (1949)).

The Sperry regular retirees have failed to demonstrate that the district court applied an "incorrect legal standard" to the evidence presented at trial, that its findings of fact based on that evidence were clearly erroneous, or that there is any issue of law warranting review of the court of appeals' decision affirming the district court's findings. For these reasons, their cross-petition should be denied.

II. The Court Of Appeals' Conclusion That The Applicable Summary Plan Descriptions Were Unambiguous As A Matter Of Law Did Not Create Any Conflict Among The Circuits.

As an additional ground for its rejection of the Sperry regular retirees' claim that they were entitled to vested medical benefits under the terms of the applicable plans, the district court held, and the court of appeals agreed, that the summary plan descriptions in which Unisys and Sperry had reserved the right to amend or terminate the retirees' "lifetime" medical benefits were unambiguous as a matter of law. App. 70a-74a, 144a-149a. As noted previously, however, the district court also held that even if the summary plan descriptions were ambiguous, the evidence presented at trial did not support the retirees' interpretations of those documents, and that the retirees therefore "have not satisfied their burden of proving that

their benefits had vested." App. 80a. The existence of this alternative, fact-intensive basis for the district court's decision demonstrates that review here is both unnecessary and unwarranted. *E.g., The Monrosa v. Carbon Black, Inc.*, 359 U.S. 180, 184 (1959) (dismissing writ of certiorari as improvidently granted where alternative basis existed for affirming lower court's decision).

Moreover, even if the lower courts' decisions had rested solely on the conclusion that the summary plan descriptions were unambiguous as a matter of law, the Sperry regular retirees have failed to identify an actual disagreement among the courts of appeals regarding this issue. Contrary to the retirees' assertion, the court of appeals' approval of the district court's holding that the summary plan descriptions were unambiguous did not create a conflict with the Eighth Circuit. Cross-Pet. 16-17. In none of the three Eighth Circuit cases cited by the retirees was there the kind of broad, unequivocal reservation of rights clause — reserving the right to amend or terminate at "any time" or for "any reason" — that was present in the Sperry and Unisys summary plan descriptions. For example, in *Jensen v. SIPCO, Inc.*, 38 F.3d 945 (8th Cir. 1994), *cert. denied*, 115 S. Ct. 1428 (1995), the reservation of rights clauses upon which the employer relied in modifying retiree benefits included the limitation that "amendments shall not be applicable to persons who are receiving pensions hereunder prior to the effective date of such amendment." 38 F.3d at 949. Based on that language, the Eighth Circuit concluded that the clauses were "not facially unambiguous — they leave at least some doubt as to whether SIPCO intended to reserve the right to change or terminate benefits to already retired pensioners. . . ." *Id.* at 950. *See also Anderson v. Alpha Portland Indus., Inc.*, 836 F.2d 1512, 1514-515 (8th Cir. 1988), *cert. denied*, 489 U.S. 1051 (1989); *DeGeare v. Alpha Portland Indus., Inc.*, 837 F.2d 812, 814 (8th Cir. 1988), *vacated on other grounds*, 489 U.S. 1049 (1989). Where a summary plan description contains a reservation of rights clause that is broad and unequivocal, the Eighth Circuit has concluded, as a matter of law, that the summary plan description is unambiguous even in the face of "lifetime" language. *See United Paperworkers Int'l Union v.*

Jefferson Smurfit Corp., 961 F.2d 1384, 1385 (8th Cir. 1992) (holding that "reduction in lifetime benefits available" to retirees under medical plan did not violate plan in light of clause that reserved unambiguously in employer the right to amend or terminate the plan at "any time").

Given the existence of the alternative basis for affirming the decision of the courts below, and the failure of the Sperry regular retirees to identify a genuine conflict among the courts of appeals regarding the ambiguity of a summary plan description, review of the questions presented by the retirees' cross-petition is unwarranted.

III. The Sperry Regular Retirees Have Failed To Identify Any Conflict Among The Circuits Resulting From The Court Of Appeals' Rejection Of Their Federal Common Law Estoppel Claims.

The court of appeals affirmed the district court's decision rejecting, as a matter of law, the Sperry regular retirees' federal common law estoppel claims. App. 154a. In reaching this conclusion, the court of appeals relied, once again, on the presence of the reservation of rights clause in the summary plan descriptions that had been distributed to plan participants:

> Due to the unambiguous reservation of rights clauses in the summary plan descriptions by which Unisys could terminate its retiree medical benefit plans, the regular retirees cannot establish "reasonable" detrimental reliance based on an interpretation that the SPDs promised vested benefits. The retirees' interpretation of the plans as providing lifetime benefits is not reasonable as a matter of law because it cannot be reconciled with the unqualified reservation of rights clauses in the plan.

App. 154a.

The court of appeals' decision is hardly remarkable and is consistent with the decisions of several other courts of appeals that have recognized the incongruity of allowing a plan partici-

pant to proceed with an estoppel claim, based on an allegation of reasonable detrimental reliance, when the information in question has been properly disclosed to the plan participant in a summary plan description or plan document. *See Gaskell v. Harvard Cooperative Soc'y*, 3 F.3d 495, 502 n.10 (1st Cir. 1993); *Moore v. Metropolitan Life Ins. Co.*, 856 F.2d 488, 491-92 (2d Cir. 1988); *Pierce v. Security Trust Life Ins. Co.*, 979 F.2d 23, 29-30 (4th Cir. 1992); *Wise v. El Paso Natural Gas Co.*, 986 F.2d 929, 934-36 (5th Cir.), *cert. denied*, 114 S. Ct. 196 (1993); *Miller v. Taylor Insulation Co.*, 39 F.3d 755, 759 (7th Cir. 1994); *Greany v. Western Farm Bureau Life Ins. Co.*, 973 F.2d 812, 822 (9th Cir. 1992); *Averhart v. U.S. West Management Pension Plan*, 46 F.3d 1480, 1485-486 (10th Cir. 1994); *Alday v. Container Corp. of Am.*, 906 F.2d 660, 666 (11th Cir. 1990), *cert. denied*, 498 U.S. 1026 (1991).[2]

Despite what the Sperry regular retirees represent in their cross-petition, the Sixth Circuit has reached the same conclusion. Although the Sixth Circuit did hold in *Armistead v. Vernitron Corp.*, 944 F.2d 1287 (6th Cir. 1991), that an employer could be estopped from modifying retiree medical and life insurance benefits that had been provided to plan participants pursuant to the terms of a collective bargaining agreement, it was not in spite of "the inclusion in the plan of language reserving the right to terminate or modify the plan," as the Sperry regular retirees claim. Cross-Pet. 20. To the contrary, the *Armistead* court expressly noted that the employer's reliance on the existence of a reservation of rights clause was misplaced, "since no such language appears in the 1985 [collective bargaining agreement] or the plan booklet subse-

2. Since its decision in *Greany*, the Ninth Circuit has held that an estoppel claim is not available under ERISA, insofar as it would result in a payment of benefits that is inconsistent with the terms of a plan (exactly what the Sperry regular retirees are seeking in this case), in light of this Court's decision in *Mertens v. Hewitt Assocs.*, 113 S. Ct. 2063 (1993). *See Watkins v. Westinghouse Hanford Co.*, 12 F.3d 1517, 1527-528 (9th Cir. 1993); *Cinelli v. Security Pac. Corp.*, 61 F.3d 1437, 1444 (9th Cir. 1995). The question of whether an estoppel claim is even cognizable under ERISA has been left open by the Eighth Circuit. *See Jensen v. SIPCO, Inc.*, 38 F.3d 945, 953 (8th Cir. 1994), *cert. denied*, 115 S. Ct. 1428 (1995).

quently published." 944 F.2d at 1295. In other words, the reservation of rights clause was deleted from the collective bargaining agreement and summary plan description some two years before the plan participants who were asserting the estoppel claim attempted to retire in 1987. *Id.* at 1290.

In those cases where a reservation of rights clause remains a part of the summary plan description, the Sixth Circuit has not hesitated to reject a claim that the employer is estopped from modifying or terminating its benefit plans. Indeed, this was exactly the situation in *Gordon v. Barnes Pumps, Inc.*, 999 F.2d 133 (6th Cir. 1993), one of the cases upon which the court of appeals relied in rejecting the Sperry regular retirees' estoppel claims in this case. App. 155a. Although the retirees have criticized the court of appeals' reliance on *Gordon*, they have completely mischaracterized the holding in that case. The retirees represent that the Sixth Circuit in *Gordon* did "*not* consider whether reliance could have been reasonable. . . ." Cross-Pet. 20 (emphasis in original). They are wrong. The Sixth Circuit *expressly* stated that the plan participants "have not shown that they *reasonably* and detrimentally relied on any statements by the company." 999 F.2d at 137 (emphasis added). In explaining its holding that there was no reasonable reliance as a matter of law, the Sixth Circuit noted that "all plan participants knew or should have known from the express terms of the Pullman Plan that benefits could be altered at any time." *Id.* Those "express terms" provided that "the Company reserves the right to modify, suspend or terminate the Plan, at any time and for any reason." *Id.* at 134.

In short, the Sperry regular retirees have attempted to manufacture disagreement among the courts of appeals where none exists. There can be no *reasonable* reliance on an alleged understanding that medical benefits were vested when that understanding (if it existed at all) flew in the face of a summary plan description that clearly advised participants that their benefits were subject to change or termination. This principle is both logical and completely consistent with the carefully crafted reporting and disclosure scheme that lies at

the heart of ERISA. It has been embraced by every court of appeals that has considered it. The Sperry regular retirees have failed, therefore, to articulate any justification for review of the court of appeals' decision rejecting their estoppel claims.

CONCLUSION

The Sperry regular retirees' cross-petition should be denied.

Respectfully submitted,

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